

117TH CONGRESS
1ST SESSION

H. R. 5714

To amend the Consumer Financial Protection Act of 2010 to provide for whistleblower incentives and protection, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 25, 2021

Mr. EMMER introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Consumer Financial Protection Act of 2010 to provide for whistleblower incentives and protection, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “CFPB Whistleblower
5 Incentives and Protection Act”.

6 **SEC. 2. BUREAU WHISTLEBLOWER INCENTIVES AND PRO-**
7 **TECTION.**

8 (a) IN GENERAL.—The Consumer Financial Protec-
9 tion Act of 2010 (12 U.S.C. 5481 et seq.) is amended by
10 inserting after section 1017 the following:

1 **“SEC. 1017A. WHISTLEBLOWER INCENTIVES AND PROTEC-**
2 **TION.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) ADMINISTRATIVE PROCEEDING OR COURT
5 ACTION.—The term ‘administrative proceeding or
6 court action’ means any judicial or administrative
7 action brought by the Bureau that results in mone-
8 tary sanctions exceeding \$1,000,000.

9 “(2) FUND.—The term ‘Fund’ means the ‘Con-
10 sumer Financial Civil Penalty Fund’ established
11 under section 1017(d)(1).

12 “(3) MONETARY SANCTIONS.—The term ‘mone-
13 tary sanctions’, when used with respect to any ad-
14 ministrative proceeding or court action means any
15 monies, including penalties, disgorgement, restitue-
16 tion, or interest, ordered to be paid or other
17 amounts of relief obtained under section 1055(a)(2).

18 “(4) ORIGINAL INFORMATION.—The term
19 ‘original information’ means information that—

20 “(A) is derived from the independent
21 knowledge or analysis of a whistleblower;

22 “(B) is not known to the Bureau from any
23 other source, unless the whistleblower is the
24 original source of the information;

25 “(C) is not exclusively derived from an al-
26 legation made in a judicial or administrative

1 hearing, in a governmental report, hearing, or
2 from the news media, unless the whistleblower
3 is a source of the information; and

4 “(D) is not exclusively derived from an al-
5 legation made in an audit, examination, or in-
6 vestigation.

7 “(5) SUCCESSFUL ENFORCEMENT.—The term
8 ‘successful enforcement’, when used with respect to
9 any administrative proceeding or court action, in-
10 cludes any settlement of such action.

11 “(6) WHISTLEBLOWER.—The term ‘whistle-
12 blower’ means any individual, or 2 or more individ-
13 uals acting jointly, who provides original information
14 relating to a violation of Federal consumer financial
15 law, consistent with any rule issued by the Bureau
16 under this section.

17 “(b) AWARDS.—

18 “(1) IN GENERAL.—In any administrative pro-
19 ceeding or court action the Bureau, subject to rules
20 prescribed by the Bureau and subject to subsection
21 (c), shall pay an award or awards to 1 or more whis-
22 tleblowers who voluntarily provided original informa-
23 tion that led to the successful enforcement of the ad-
24 ministrative proceeding or court action in an aggre-
25 gate amount equal to—

1 “(A) not less than the greater of—

2 “(i) 10 percent, in total, of monetary
3 sanctions imposed and collected in the ad-
4 ministrative proceeding or court action; or

5 “(ii) \$50,000; and

6 “(B) not more than 30 percent, in total, of
7 such monetary sanctions.

8 “(2) PAYMENT OF AWARDS.—Any amount paid
9 under paragraph (1) shall be paid from the Fund.

10 “(3) AWARD MAXIMUM.—Notwithstanding any
11 other provision in this section, the maximum award
12 to any single whistleblower is limited to \$5,000,000.

13 “(c) DETERMINATION OF AMOUNT OF AWARD; DE-
14 NIAL OF AWARD.—

15 “(1) DETERMINATION OF AMOUNT OF
16 AWARD.—

17 “(A) DISCRETION.—The determination of
18 the percentage amount of an award made under
19 subsection (b) shall be in the discretion of the
20 Bureau.

21 “(B) CRITERIA.—In determining the per-
22 centage amount of an award made under sub-
23 section (b), the Bureau shall take into consider-
24 ation—

1 “(i) the significance of the informa-
2 tion provided by the whistleblower to the
3 successful enforcement of the administra-
4 tive proceeding or court action;

5 “(ii) the degree of assistance provided
6 by the whistleblower and any legal rep-
7 resentative of the whistleblower in an ad-
8 ministrative proceeding or court action;

9 “(iii) the programmatic interest of the
10 Bureau in deterring violations of Federal
11 consumer financial law (including applica-
12 ble rules) by making awards to whistle-
13 blowers who provide information that leads
14 to the successful enforcement of such laws;
15 and

16 “(iv) such additional relevant factors
17 as the Bureau may establish by rule.

18 “(2) DENIAL OF AWARD.—No award under
19 subsection (b) may be made—

20 “(A) to any whistleblower who is, or was at
21 the time the whistleblower acquired the original
22 information submitted to the Bureau, a mem-
23 ber, officer, or employee of an entity described
24 in subclauses (I) through (V) of subsection
25 (h)(1)(C)(i);

1 “(B) to any whistleblower who is convicted
2 of a criminal violation related to the adminis-
3 trative proceeding or court action for which the
4 whistleblower otherwise could receive an award
5 under this section;

6 “(C) to any whistleblower who is found to
7 be liable for the conduct in the administrative
8 proceeding or court action, or a related action,
9 for which the whistleblower otherwise could re-
10 ceive an award under this section;

11 “(D) to any whistleblower who planned
12 and initiated the conduct at issue in the admin-
13 istrative proceeding or court action for which
14 the whistleblower otherwise could receive an
15 award under this section;

16 “(E) to any whistleblower who submits in-
17 formation to the Bureau that is based on the
18 facts underlying the administrative proceeding
19 or court action previously submitted by another
20 whistleblower;

21 “(F) to any whistleblower who knowingly
22 and willfully makes any false, fictitious, or
23 fraudulent statement or representation, or who
24 makes or uses any false writing or document

1 knowing the same to contain any false, ficti-
2 tious, or fraudulent statement or entry; and

3 “(G) to any whistleblower who fails to sub-
4 mit information to the Bureau in such form as
5 the Bureau may, by rule, require.

6 “(d) REPRESENTATION.—

7 “(1) PERMITTED REPRESENTATION.—Any
8 whistleblower who makes a claim for an award under
9 subsection (b) may be represented by counsel.

10 “(2) REQUIRED REPRESENTATION.—

11 “(A) IN GENERAL.—Any whistleblower
12 who anonymously makes a claim for an award
13 under subsection (b) shall be represented by
14 counsel if the whistleblower submits the infor-
15 mation upon which the claim is based.

16 “(B) DISCLOSURE OF IDENTITY.—Prior to
17 the payment of an award, a whistleblower shall
18 disclose the identity of the whistleblower and
19 provide such other information as the Bureau
20 may require, directly or through counsel of the
21 whistleblower.

22 “(e) NO CONTRACT NECESSARY.—No contract or
23 other agreement with the Bureau is necessary for any
24 whistleblower to receive an award under subsection (b),
25 unless otherwise required by the Bureau by rule.

1 “(f) APPEALS.—Any determination made under this
2 section, including whether, to whom, or in what amount
3 to make awards, shall be in the discretion of the Bureau.
4 Any such determination, except the determination of the
5 amount of an award if the award was made in accordance
6 with subsection (b), may be appealed to the appropriate
7 court of appeals of the United States not more than 30
8 days after the determination is issued by the Bureau. The
9 court shall review the determination made by the Bureau
10 in accordance with section 706 of title 5, United States
11 Code.

12 “(g) REPORTS TO CONGRESS.—Not later than Octo-
13 ber 30 of each year, the Bureau shall transmit to the Com-
14 mittee on Financial Services of the House of Representa-
15 tives and the Committee on Banking, Housing, and Urban
16 Affairs of the Senate a report on the Bureau’s whistle-
17 blower award program under this section, including a de-
18 scription of the number of awards granted and the types
19 of cases in which awards were granted during the pre-
20 ceding fiscal year.

21 “(h) PROTECTION OF WHISTLEBLOWERS.—

22 “(1) CONFIDENTIALITY.—

23 “(A) IN GENERAL.—Except as provided in
24 subparagraphs (B) and (C), the Bureau and
25 any officer or employee of the Bureau, may not

1 disclose any information, including information
2 provided by a whistleblower to the Bureau,
3 which could reasonably be expected to reveal
4 the identity of a whistleblower, except in ac-
5 cordance with the provisions of section 552a of
6 title 5, United States Code, unless and until re-
7 quired to be disclosed to a defendant or re-
8 spondent in connection with a public proceeding
9 instituted by the Bureau or any entity described
10 in subparagraph (C). For purposes of section
11 552 of title 5, United States Code, this para-
12 graph shall be considered a statute described in
13 subsection (b)(3)(B) of such section 552.

14 “(B) EFFECT.—Nothing in this paragraph
15 is intended to limit the ability of the Attorney
16 General to present such evidence to a grand
17 jury or to share such evidence with potential
18 witnesses or defendants in the course of an on-
19 going criminal investigation.

20 “(C) AVAILABILITY TO GOVERNMENT
21 AGENCIES.—

22 “(i) IN GENERAL.—Without the loss
23 of its status as confidential in the hands of
24 the Bureau, all information referred to in
25 subparagraph (A) may, in the discretion of

1 the Bureau, when determined by the Bu-
2 reau to be necessary or appropriate, be
3 made available to—

4 “(I) the Department of Justice;

5 “(II) an appropriate department
6 or agency of the Federal Government,
7 acting within the scope of its jurisdic-
8 tion;

9 “(III) a State attorney general in
10 connection with any criminal inves-
11 tigation;

12 “(IV) an appropriate department
13 or agency of any State, acting within
14 the scope of its jurisdiction; and

15 “(V) a foreign regulatory author-
16 ity.

17 “(ii) MAINTENANCE OF INFORMA-
18 TION.—Each of the entities, agencies, or
19 persons described in clause (i) shall main-
20 tain information described in that clause
21 as confidential, in accordance with the re-
22 quirements in subparagraph (A).

23 “(2) RIGHTS RETAINED.—Nothing in this sec-
24 tion shall be deemed to diminish the rights, privi-
25 leges, or remedies of any whistleblower under section

1 1057, any other Federal or State law, or under any
2 collective bargaining agreement.

3 “(i) RULEMAKING AUTHORITY.—The Bureau shall
4 have the authority to issue such rules as may be necessary
5 or appropriate to implement the provisions of this section.

6 “(j) ORIGINAL INFORMATION.—Information sub-
7 mitted to the Bureau by a whistleblower in accordance
8 with rules implementing this section shall not lose its sta-
9 tus as original information solely because the whistle-
10 blower submitted such information prior to the effective
11 date of such rules, provided such information was sub-
12 mitted after the date of enactment of this section.”.

13 (b) CLERICAL AMENDMENT.—The table of contents
14 under section 1(b) of the Dodd-Frank Wall Street Reform
15 and Consumer Protection Act is amended by inserting
16 after the item relating to section 1017 the following:

“Sec. 1017A. Whistleblower incentives and protection.”.

17 **SEC. 3. AMENDMENT TO THE CONSUMER FINANCIAL CIVIL**
18 **PENALTY FUND.**

19 Section 1017(d)(2) of the Consumer Financial Pro-
20 tection Act of 2010 (12 U.S.C. 5497(d)(2)) is amended
21 by striking “under the Federal consumer financial laws.”
22 and inserting “under the Federal consumer financial laws
23 and for awards authorized under section 1017A.”.

○